IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 8165 of 1994

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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RAMABHAI PUNJABHAI CHAUHHAN - Petitioner(s)
Versus
MANIBHAI SOMABHAI BRAHMBHATT & 3 - Respondent(s)

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Appearance :
MR NS DESAI for Petitioner(s) : 1,
MR HM PARIKH for Respondent(s) : 1,
NOTICE SERVED for Respondent(s) : 2,
MR AY KOGJE AGP for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 09/01/2007

ORAL JUDGMENT

1. Mr. N.S. Desai, learned counsel for the petitioner, Mr.H.M. Parikh, learned counsel for the respondent No.1 and

Mr.A.Y. Kogje, learned A.G.P. for the State. None for the respondent No.2 though served.

2. The parties are heard.

3. The petitioner being aggrieved by the order dtd.30/4/1994 / 6/5/1994 passed by the Secretary (Disputes-Appeals) in Appeal No.SSRD/CON/KHD/8 of 1994, where-under the learned Secretary exercising his revisional powers, has set aside the order dtd.5/7/1993 / 5/10/1993 passed by the learned Deputy Collector in Case No.CONSR/123 of 1992.

4. Short facts necessary for disposal of the petition are that the father of the respondent No.1 namely Somabhai Gokalbhai Brahmbhatt was owing 38 Gunthas of land of Survey No.184/2 situate in the Sim of village Sandesar, Tal.Anand, District Kheda. Out of the said area, deceased Somabhai Gokalbhai Brahmbhatt sold 19 Gunthas of land to the petitioner by registered sale deed dtd.1/6/1984 for a sum of Rs.6000.00. Mutation Entry No.7033 was made on 1/6/1984, but under order dtd.8/10/1984, the said Mutation Entry was not certified. Thereafter, yet another

Mutation Entry No.7128 was made on 18/4/1986 and it was certified on 12/6/1987.

5. The respondent No.2 Prabhatbhai Lallubhai Chauhan, after learning about the said entry, almost after about five years of the entry, filed RTS Appeal No.80 of 1992 in the Court of Deputy Collector, Anand. The said appeal came to be dismissed on 21/12/1992. It was held by the appellate authority that there was no breach of the provisions of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947 (hereinafter referred to as “the Fragmentation Act” for short). Against the said order of the Deputy Collector, the said Prabhatbhai Lallubhai Chauhan filed Revision Application No.8 of 1993 in the Court of Collector, Kheda, who allowed the same and remanded the matter to the Deputy Collector for deciding the matter afresh. After remand of the said matter, the Deputy Collector issued notices to all the parties, including the respondent No.1, the parties were allowed to show cause and lead evidence etc. After hearing the parties, learned Deputy Collector held that there was no breach of any provision specially of secs.7 and 8 of the Fragmentation Act.

Surprisingly, the objector - Prabhatbhai Lallubhai Chauhan did not choose to challenge the order passed by the Collector, but the present respondent No.1 – heir and successor of Somabhai Gokalbhai Brahmbhatt, choose to file a Revision Application before the Secretary (Disputes-Appeals). After hearing the parties, the learned Secretary in exercise of his revisional powers allowed the revision application, set aside the entry and held that the transfer was illegal, he accordingly directed dispossession of the petitioner and restoration of possession in favour of the respondent No.1 namely Manibhai Somabhai Brahmbhatt.

6. Mr.Desai, learned counsel for the petitioner raised many fold contentions including a submission that neither Somabhai Gokalbhai Brahmbhatt nor his son Manibhai Somabhai Brahmbhatt ever raised any objection to the transfer, therefore, they could not challenge the order passed by the Deputy Collector after the remand. He also submits that the Collector remanded the matter on the objection of Prabhatbhai Lallubhai Chauhan because Prabhatbhai Lallubhai Chauhan was desirous of purchasing the property.

7. Mr.Parikh, learned counsel for the respondent No.1, however, opposed the write application and submitted that any person who is party to the proceedings if was aggrieved by the final order passed by the concerned Deputy Collector, then he could certainly challenge the said order before the higher authority either in appeal or in revision.

8. It is not in dispute before me that the sale was effected in the year 1984 and the entries were certified on 12/6/1987. Upto 20/12/1992, the present respondent No.1 did not file his objection, he never challenged the alienation, transfer and certification of the entry, either on the ground of breach of any provision of Bombay Land Revenue Code or Fragmentation Act, he was content and satisfied. Prabhatbhai Lallubhai Chauhan was the owner of the contiguous land and he had raised his objection submitting inter-alia that he had better right to purchase the property and as the property was sold in favour of a person who did not possess right to purchase. An inquiry was to be made only into the rights of Prabhatbhai Lallubhai Chauhan. If the matter was ultimately to be

decided in favour of Prabhatbhai Lallubhai Chauhan, then, the sale effected in favour of the present petitioner could be nullified and an order of sale could be made in favour of Prabhatbhai Lallubhai Chauhan. In either of the cases i.e. an order in favour of Prabhatbhai Lallubhai Chauhan or an order in favour of the present petitioner, the present respondent No.1 was not to be given anything, the property was not come to him, the property could not be restored back in favour of Somabhai Gokalbhai Brahmbhatt or in favour of Manibhai son of Somabhai Gokalbhai Brahmbhatt. If that is the legal situation, then, the rights of the respondent No.1 - Manibhai Somabhai Brahmbhatt were neither to be discussed nor were required to be decided. If the scope of the inquiry was limited, then, the same could not be enhanced at the request of the original owner.

9. In the opinion of this Court, the respondent No.1 – Manibhai Somabhai Brahmbhatt had no right to file revision petition nor he was entitled to challenge the order passed by the Deputy Collector. The Secretary (Disputes-Appeals) went wrong in entertaining the revision petition and deciding the same in favour of the

present respondent No.1, he had no jurisdiction to entertain the revision application, because, the respondent No.1 had no right to file the revision application.

10. For this reason alone, I quash the impugned order dtd.30/4/1994 / 6/5/1994 passed by the Secretary (Disputes-Appeals) in Appeal No.SSRD/CON/KHD/8 of 1994. The petition is allowed. Rule is made absolute. No costs.

(R.S. GARG, J.)

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